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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/724,821

12/02/2003

Dan Bourla

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07/10/2008

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EXAMINER

THOMAS, BRANDI N

ART UNIT

PAPER NUMBER

2873

NOTIFICATION DATE

DELIVERY MODE

07/10/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

<b>Office Action Summary</b>	<b>Application No.</b> 10/724,821	<b>Applicant(s)</b> BOURLA, DAN	
	<b>Examiner</b> BRANDI N. THOMAS	<b>Art Unit</b> 2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Detailed Action</u> .                  |

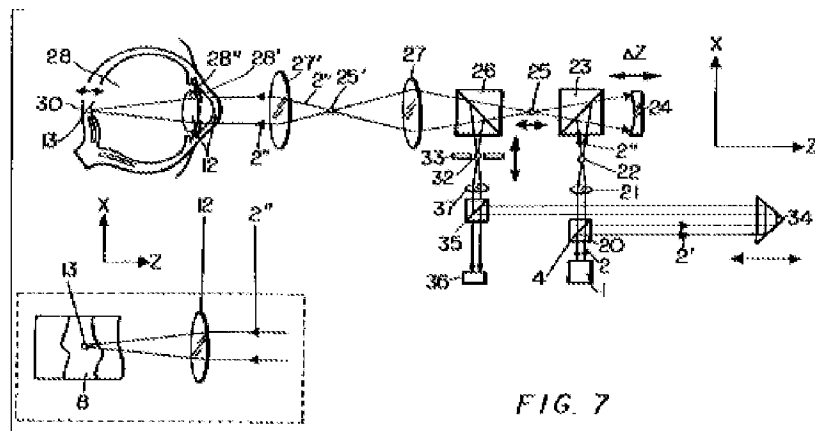
**DETAILED ACTION*****Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fercher (5847827) in view of Hellmuth et al. (7084986).

Regarding claim 7, Fercher discloses, in figures 1 and 7, a method for performing biometry, comprising: making biometric measurements with a partial coherence interferometry (PCI) device aimed at the eye (30) after removal of the lens therefrom (col.9, lines 51-59) but does not specifically disclose removing a lens from an eye. Hellmuth et al. discloses removing the lens from an eye (col. 1, lines 31-39). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the device of Hellmuth et al. for the purpose of cataract operations (col. 1, lines 31-39).



Regarding claim 10, Fercher discloses, in figures 1 and 7, a method for performing biometry, further comprising making pre-incision biometric measurements with the PCI device (col. 9, lines 50-54).

3. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fercher (5847827) in view of Hellmuth et al. (7084986) as applied to claim 7 above, and further in view of Patel (2003/0214628 A1).

Regarding claim 8, Fercher discloses, in figures 1 and 7, a method for performing biometry, further comprising calculating optical features based on the biometric measurements (col. 10, lines 5-10) but does not specifically disclose selecting an intraocular lens (IOL) in accordance with the optical features. Patel discloses selecting an intraocular lens (IOL) in accordance with the optical features (section 0019, step 14). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the device of Fercher with the intraocular lens of Patel for the purpose of providing optimum vision for an eye with prior corneal refractive surgery (section 0010).

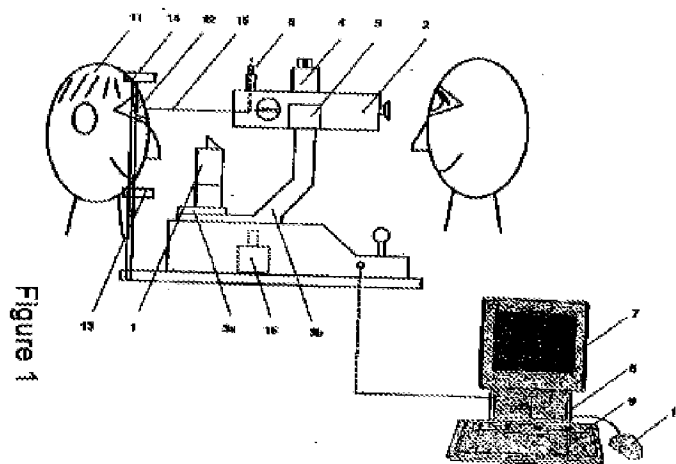
Regarding claim 9, Fercher discloses, in figures 1 and 7, a method for performing biometry, further comprising making biometric measurements with the PCI device aimed at the eye (30) (col. 10, lines 5-10) but does not specifically disclose measurements after insertion of an IOL into the eye. Patel discloses measurements after insertion of an IOL into the eye (section 0019, step 14). Therefore it would have been obvious to one having ordinary skill in the art at the time of the invention to combine the device of Fercher with the intraocular lens of Patel for

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the purpose of providing optimum vision for an eye with prior corneal refractive surgery (section 0010).

4. Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fercher (5847827) in view of Hellmuth et al. (7084986) as applied to claim 7 above, and further in view of Baumann et al. (2006/0146283).

Regarding claim 11, Fercher discloses, in figures 1 and 7, a method for performing biometry but does not specifically disclose using said microscope to focus radiation from the PCI device to the eye. Baumann et al. discloses using said microscope (2) to focus radiation from the PCI device to the eye (12) (section 0017). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the device of Fercher with the microscope of Baumann et al. for the purpose of using the microscope as an observation system (section 0017).



Regarding claim 12, Fercher discloses, in figures 1 and 7, a method for performing biometry, wherein said PCI device comprises an interferometer that directs a beam to a beam

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splitter (37), and the method further comprises using said beam splitter (37) to direct a portion of radiation incident thereon towards a lens (37) (col. 9, lines 59-62) but does not specifically disclose the use of a microscope. Baumann et al. discloses using said microscope (2) to focus radiation from the PCI device to the eye (12) (section 0017). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the device of Fercher with the microscope of Baumann et al. for the purpose of using the microscope as an observation system (section 0017).

Regarding claim 13, Fercher discloses, in figures 1 and 7, a method for performing biometry, wherein said PCI device further comprises a lens system, and the method further comprises using said lens (12) to focus radiation incident thereon to a portion of the eye (30) to generate a secondary radiation source on the portion of the eye (30) (col. 10, lines 5-8), wherein radiation emanating from the secondary radiation source passes through said beam splitter (37) and impinges upon said lens system (col. 12, lines 11-24) but does not specifically disclose the use of a microscope. Baumann et al. discloses using said microscope (2) to focus radiation from the PCI device to the eye (12) (section 0017). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the device of Fercher with the microscope of Baumann et al. for the purpose of using the microscope as an observation system (section 0017).

Regarding claim 14, Fercher discloses, in figures 1 and 7, a method for performing biometry, further comprising using at least one photodetector (36) to detect radiation exiting said lens system (col. 9, lines 51-54).

Regarding claim 15, Fercher discloses, in figures 1 and 7, a method for performing biometry, further comprising processing an output from said at least one photodetector (36) (col. 9, lines 51-54).

Regarding claim 16, Fercher discloses, in figures 1 and 7, a method for performing biometry, a difference between path lengths of radiation traversing arms of the interferometer equals the product of the length and refractive index of a reference eye (30) (col. 12, lines 24-30) but does not specifically disclose wherein said interferometer comprises a Michelson interferometer. It would have been obvious to modify the invention to include a Michelson interferometer, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (In re Leshin, 125 USPQ 416). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention to include a Michelson interferometer for the purpose of its ability to allow light strikes a partially reflecting plate at an angle of  $45^\circ$ , the light beams reflected and transmitted by the plate are both reflected back to the plate by mirrors.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 7-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANDI N. THOMAS whose telephone number is (571)272-2341. The examiner can normally be reached on Monday - Thursday from 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Scott J. Sugarman/  
Primary Examiner, Art Unit 2873

BNT

/Brandi N Thomas/  
Examiner Art Unit 2873